

Approved: T. Josiah Pertz
Assistant United States Attorney

Before: THE HONORABLE ANDREW E. KRAUSE
United States Magistrate Judge
Southern District of New York

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|--------------------------|---|---------------------------|
| UNITED STATES OF AMERICA | : | <u>COMPLAINT</u> 22MJ2323 |
| - v. - | : | Violation of |
| | : | 18 U.S.C. §§ 924(c) and |
| DAVID ZAYAS, | : | 2; 21 U.S.C. |
| | : | \$ 841(b) (1) (B) |
| Defendant. | : | |
| | : | COUNTY OF OFFENSE: |
| | : | WESTCHESTER |

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SOUTHERN DISTRICT OF NEW YORK, ss.:

MICHAEL FLANAGAN, being duly sworn, deposes and says that he is a Special Agent with the Homeland Security Investigations ("HSI"), and charges as follows:

COUNT ONE

(Possession of Crack Cocaine with Intent to Distribute)

1. On or about March 10, 2022, in the Southern District of New York and elsewhere, DAVID ZAYAS, the defendant, intentionally and knowingly distributed and possessed with the intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. The controlled substance involved in the offense was 28 grams and more of mixtures and substances containing a detectable amount of cocaine base, in a form commonly known as "crack," in violation of Title 21, United States Code, Section 841(b)(1)(B).

(Title 21, United States Code, Sections 841(a)(1) and (b)(1)(B).)

COUNT TWO
(Possession of a Firearm in Furtherance of a
Drug Trafficking Crime)

3. On or about March 10, 2022, in the Southern District of New York and elsewhere, DAVID ZAYAS, the defendant, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, possession of crack with intent to distribute as charged in Count One of this Complaint, knowingly did use and carry a firearm, and, in furtherance of such crime, did possess a firearm, to wit: a black Smith & Wesson 9mm caliber semi-automatic handgun and a black Taurus 9mm caliber semi-automatic handgun.

(Title 18, United States Code, Section 924(c)(1)(A)(i))

The bases for my knowledge and for the foregoing charge are, in part, as follows:

4. I am a Special Agent with HSI. I have been personally involved in the investigation of this matter. This affidavit is based upon my personal participation in the investigation of this matter, and my conversations with law enforcement officers, as well as my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part.

5. Based on my discussions with an officer ("Officer-1") of the Westchester County Police Department ("WCPD"), and my participation in this investigation, I have learned, among other things, the following:

a. On or about March 10, 2022 at approximately 3:00 p.m., Officer-1 was patrolling the Cross County Parkway in the vicinity of Yonkers, New York, in an unmarked police vehicle, when Officer-1 observed a Gray Chevy Equinox with a Massachusetts license plate (the "Gray Equinox") illegally change lanes twice without signaling. Officer-1 followed the Gray Equinox, and observed the Gray Equinox travelling approximately 15-20 miles per hour faster than the speed limit. The Gray Equinox also illegally passed on the right twice. Officer-1 signaled for the vehicle to pull over, which it did.

b. Officer-1 walked up to the Gray Equinox and asked the driver for his license and registration, which identified the driver as DAVID ZAYAS, the defendant. Officer-1 asked ZAYAS where ZAYAS was headed, and ZAYAS responded that he was going to see his aunt in the hospital. When Officer-1 asked where the hospital was, ZAYAS was unsure. ZAYAS was also unsure of the name of the hospital. ZAYAS initially stated that his destination was in the Bronx, then stated that his destination was in Yonkers. After ZAYAS's inconsistent statements, Officer-1 asked ZAYAS to exit the vehicle. Officer-1 continued to question ZAYAS, and asked him if he was carrying drugs or guns in the car. ZAYAS denied this.

c. Officer-1 was traveling with a trained police dog ("K9-1")¹ in the police vehicle. After questioning ZAYAS, Officer-1 brought K9-1 up to the Gray Equinox. K9-1 sniffed the outside of the car and alerted to the presence of narcotics through a trained signaling behavior.

d. Officer-1 retrieved a scope camera from the police vehicle, and maneuvered it inside the cabin of the Gray Equinox. Using the camera, under the dashboard, in what appeared to be a secret compartment (the "Trap"), Officer-1 observed a large amount of cash and what appeared to be narcotics. Officer-1 then placed ZAYAS under arrest. The Gray Equinox was towed back to WCPD Headquarters.

6. On or about March 10, 2022, after the arrest of DAVID ZAYAS, the defendant, law enforcement officers from WCPD and

¹ Based on my discussions with WCPD officers, I know the following, in substance and in part. K9-1 was acquired by the WCPD in October of 2020. K9-1 completed a ten week basic course of instruction in narcotics detection at the Westchester County Police Academy in Valhalla, New York. In July of 2021, K9-1 and the WCPD K9 unit officers were certified by New York State Division of Criminal Justice Services, as a Police Narcotics Detection Canine Team for cocaine, crack cocaine, methamphetamines, ecstasy, and heroin detection. K9-1 will positively alert her handler to the presence of these narcotic odors through pre-arranged signaling behavior. K9-1 is used regularly in narcotics detection and has participated in numerous seizures of narcotics and U.S. currency. K9-1 has also been utilized for narcotics detection by other federal, state and local law enforcement agencies.

HSI, including myself, searched the Gray Equinox. In the Trap, law enforcement found the following, in substance and in part:

a. approximately 112 grams of a white, rocky substance that was later found through field testing to contain crack;

b. approximately \$34,000 in cash;

c. a black Smith & Wesson 9mm semiautomatic pistol containing 10 rounds of ammunition, and a black Taurus 9mm semiautomatic pistol containing 8 rounds of ammunition;

d. two additional ammunition magazines, including a magazine hidden in a sock, and an extended 30-round ammunition magazine, containing ammunition;


7. I know from conversations with other law enforcement officers, and my participation in prior narcotics investigations, that the quantity of crack found in the Gray Equinox was larger than the quantity typically held by a crack user at any one time for personal use.

WHEREFORE, deponent respectfully requests that DAVID ZAYAS, the defendant, be arrested, and imprisoned or bailed, as the case may be.

/s/ Michael Flanagan
(by AEK, with permission)

MICHAEL FLANAGAN
Special Agent
Homeland Security Investigations

Sworn to me by reliable electronic means
in accordance with Fed. R. Crim. P.
4.1, this 11th day of March, 2022
[by FaceTime]



THE HONORABLE ANDREW E. KRAUSE
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK